

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

JAMES CHANDLER	§	
Plaintiff	§	
	§	
VS.	§	CIVIL ACTION NO. 2:13-CV-223
	§	
THE KROGER CO.	§	JURY TRIAL DEMANDED
Defendant	§	

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE:

Plaintiff, James Chandler, files this Original Complaint complaining of The Kroger Co., Defendant.

**I.
PARTIES, JURISDICTION AND VENUE**

1. This action is brought in this Court under the provisions of 28 U.S.C. §1332(a)(1), because Plaintiff and Defendant are citizens of different states, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

2. Venue is proper in the Eastern District Court pursuant to section 28 U.S.C. 1391(a) & (c). In particular, Defendant is a corporation that maintains a presence in this district, which presence is sufficient to establish personal jurisdiction over said Defendant.

3. Parties to this suit are:

Plaintiff: James Chandler, is an individual who is a citizen of the State of Texas and resides in Kilgore, Texas within the Eastern District of Texas.

Defendant: The Kroger Co., is an Ohio corporation who may be served by serving its registered agent, Corporation Service Company d/b/a CSC-Lawyers Inc., 211 E. 7th Street, Suite 620, Austin, Texas 78701.

II. NATURE OF THE ACTION

4. On or about November 2, 2012, Plaintiff James Chandler, driving a 2004 Harley Davidson motorcycle, was traveling southbound on Commerce Street in Kilgore, Texas. Cynthia Danita Joice, driving a 2012 Toyota Carina owned and operated by Defendant, was also traveling southbound on Commerce Street immediately behind James Chandler. Mr. Chandler was attempting to make a left turn onto Harris Street. Ms. Joice passed Mr. Chandler on the left in a no passing zone as Mr. Chandler was turning left, and collided with Mr. Chandler. Ms. Joice failed to keep a proper lookout, failed to adhere to the no passing zone, failed to control her speed, failed to slow to avoid a collision, and failed to turn her vehicle to avoid the collision. At all times Plaintiff was operating his motorcycle in a prudent and safe manner.

5. At the time of the collision in question, Cynthia Danita Joice was in the course and scope of her employment with Defendant, and was driving a company vehicle. As a result of Joice's negligence and her vehicle colliding with the motorcycle being driven by Mr. Chandler, Mr. Chandler suffered severe and debilitating injuries.

6. Joice was negligent in the manner in which she operated her company vehicle. Said negligence proximately caused the severe and traumatic injuries and damages to Mr. Chandler.

7. At all times material hereto, Joice was employed by Defendant, and was acting at its direction and for its benefit, and was engaged in accomplishing a task for which she was employed by Defendant. Defendant is legally liable for Joice's negligent acts pursuant to the theories of *respondeat superior* and vicarious liability.

8. Whenever it is alleged in this Complaint that Defendant did any act or thing, it is meant that Defendant's agents, servants, employees, parent agents, ostensible agents, agents by

estoppel and/or representatives did such act or thing, and at the time such act or thing was done it was done with the authorization of Defendant, or was done in the normal routine course of the agency or employment of Defendant.

III. ACTUAL DAMAGES

9. James Chandler was 36 years old at the time of his injuries, the effects of which will continue for the remainder of his life. He was in good health and enjoyed an outgoing lifestyle. Before his injuries, Mr. Chandler was industrious and energetic. As a result of the negligent and careless actions of Defendant's driver, James Chandler has suffered serious injuries to his entire body, more specifically, his chest, ribs, neck, back, abdomen, left and right hands, and knees.

10. Mr. Chandler seeks damages which will reasonably and fairly compensate him for the following losses:

- a. Past and future physical pain and mental anguish, meaning the conscious physical pain and emotional pain, torment and suffering, experienced by him as a result of the occurrence in question;
- b. Medical expenses, meaning the medical expenses which have been incurred on behalf of the medical care for Mr. Chandler in the past, and which will in reasonable probability be incurred in the future;
- c. Physical impairment, both past and future;
- d. Physical disfigurement, both past and future; and
- e. Loss of earnings and loss of earning capacity, past and future

PRAYER

11. Plaintiff requests that the Defendant be cited to appear and answer, and that on final

trial Plaintiff have:

- a. All actual, economic and compensatory damages in an amount in excess of the minimum jurisdictional limits of the Court;
- b. Prejudgment and postjudgment interest at the legal rate, costs of court, and
- c. Such other and further relief as Plaintiff may be entitled to receive.

JURY DEMAND

12. Plaintiff makes a demand for a jury trial in accordance with Federal Rules of Civil Procedure 38.

Respectfully submitted,

LAW OFFICE OF KEITH MILLER
100 E. Ferguson, Suite 101
Tyler, Texas 75702
Telephone: (903) 597-4090
Facsimile: (903) 597-3692
Keith Miller
State Bar No. 14093750

ERSKINE & McMAHON, L.L.P.
P. O. Box 3485
Longview, Texas 75606
Telephone: (903)757-8435
Facsimile: (903)757-9429

By: /s/ Blake C. Erskine
Blake C. Erskine
State Bar No. 06649000
blakee@erskine-mcmahon.com

ATTORNEYS FOR PLAINTIFF